

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 10-04-2007

CORAM

THE HONOURABLE MR.JUSTICE P.SATHASIVAM
AND
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

WRIT APPEAL No.716 OF 1998

Mani

... Appellant/Petitioner

-vs-

1.Group Commandant,
Central Industrial Security Force,
Office of the Group Commandant,
Chennai-102.

2.The Deputy Inspector General (S-2),
Central Industrial Security Force,
Chennai-102.

3.The Director General,
Office of the Director General,
Central Industrial Security Force,
Lodhi Road,
New Delhi-110 003.

.... Respondents/Respondents

Writ appeal filed under Clause 15 of the Letters Patent against the order dated 28.7.1997 made in W.P.No.3039 of 1988.

W.P.No.3039 of 1988:- Petition filed under Article 226 of the constitution of India writ of certiorari calling for the records relating to the proceedings of the 1st respondent in No.V.15014/maj.34/1G, M/84/Ad.VI dated 31.8.1984 and the consequent proceedings of the 2nd respondent in No.V.11014/82/96-A6 (S2) 12668 dated 10.12.1985 and the proceedings of the 3rd respondent in No.V.10114/237/82L&R dated 12.1.1987 quash the same and direct the respondent to reinstate the petitioner's in service with respective benefits.

For appellant : Mr.V.Selvaraj
For respondents: Mr.P.Wilson,
Asst. Solicitor General

J U D G M E N T

(Judgment of the Court was delivered by S.TAMILVANAN,J)

Challenging the order of dismissal, passed by the third respondent, the appellant herein preferred the writ petition in W.P.No.3039/88, and the same was dismissed by the learned single judge, by order dated 28.07.1997, aggrieved by which, this writ appeal has been preferred by the petitioner therein.

2. The brief facts of the case are as follows :

The appellant herein was recruited as Constable in Central Industrial Security Force (hereinafter called as CISF), on 14.07.1976, subsequently, by an order, dated 11.06.1980 of the third respondent, his service was regularised. During 1981, he was working as Constable in the CISF, at Madras Port Trust. While so, on 01.08.1981, the appellant was suspended from service by the first respondent, based on two charges, as stated in Annexure I of the memorandum, dated 11.09.1981. The charges framed as per statement of article of charge against the appellant 7639362 SG I.Mani of 'C' coy, CISF / MPT are as follows :

- "1. Gross indiscipline and misconduct in that you on 30 July 81 at about 0500 hrs were chased and caught with the stolen property of one ball-bearing marked as SKF NU-321-1 Germany by the crime party near N3 WH.
2. Gross indiscipline and misconduct in that you while on duty at WQ-1 shed during 3rd shift on 18/19 July 81 removed one ball-bearing SKF NU-321-2 Germany and hidden the property under the tarpaulin and latter on under red soil bags on 28.7.81 with an intention of removing the same on getting opportunity."

3. Based on the charges framed on 11.09.1981, the appellant was asked to submit his explanation. The charges were denied as false by the appellant, by his written representation. An Assistant Commandant of CISF was appointed as enquiry officer and he submitted his report, holding the appellant guilty of the charges. The first respondent agreed with the finding of the enquiry officer, by his proceeding, dated 31.08.1994, dismissed the appellant from service. Against the said order of dismissal,

the appellant preferred an appeal before the second respondent, but the same was also dismissed on 10.12.1985 by the second respondent. The appeal preferred by the appellant before the third respondent was also dismissed on 12.01.1987. Hence, challenging the orders, the appellant filed the aforesaid writ petition. The learned single judge, considering the merits of the case, dismissed the writ petition, aggrieved by the same, this writ appeal has been preferred.

4. It is not in dispute that based on the allegation levelled against the appellant, a criminal case had been filed against the appellant, and after the trial, he was acquitted by the learned XI Metropolitan Magistrate, George Town, Chennai, on 29.12.1984.

5. Mr.V.Selvaraj, learned counsel appearing for the appellant submitted that without furnishing a copy of the enquiry report to the appellant, the first respondent, passed the impugned order of dismissal, which is violative of principles of natural justice and the same was not considered by the learned Judge, while dismissing the writ petition. The second contention of the learned counsel for the appellant is that the appellant having been acquitted in the criminal case, should not have been held guilty of the charges and removed from service, as per the departmental proceeding. It is seen that the appellant had raised the plea that a copy of the report of the enquiry officer was not furnished to him, as one of the grounds in the writ petition. The second ground raised by him, is that the appellant having been acquitted by the criminal court, should not have been dealt with by departmental proceedings, leading to his dismissal from service.

6. Per contra, learned Assistant Solicitor General Mr.P.Wilson, submitted that non-furnishing of a copy of the report of the enquiry officer, by itself would not vitiate the order of dismissal, if the same is not prejudicial to the appellant. In a criminal proceeding, the prosecution should establish the case and bring home the guilt of the accused beyond all reasonable doubts and benefit of doubt should be given to the accused, but in the departmental enquiry, preponderance of probability to establish the guilt, would be sufficient to take action against the delinquent official. In support of his contention, he relied on the following decisions

1. T.N.C.S. Corpn. Ltd., v. K.Meerabai, 2006 (2) SCC 255
2. Commandant, Central Industrial Security Force v. Bhopal Singh, AIR 1994 SCC 573.

7. The Hon'ble Supreme Court of India, in the decision reported in 2006 (2) SCC 255, has categorically held that the scope of disciplinary proceeding before the authority and the scope of criminal proceeding before the court of law, are quiet distinct, exclusive and independent of each other, and even the standards of proof required in the criminal proceeding and departmental enquiry are different. It has been held in a catena of decisions of the Hon'ble Apex Court that interference by this court is not permissible, unless the orders passed by the quasi-judicial authorities are clearly unreasonable or perverse or manifestly illegal or grossly unjust and therefore, merely on the basis of acquittal in the criminal case, delinquent official, cannot be discharged from the charges of departmental proceeding.

8. In the aforesaid case, decided by the Hon'ble Apex Court, the delinquent official had been charged for misappropriation of the employer-corporation's fund, and the criminal proceeding initiated against the delinquent was ended in acquittal, wherein it was held by the Hon'ble Apex Court, that merely on the ground, that the delinquent official acquitted in the criminal case, he cannot be discharged from the departmental proceeding. In the said decision at page number 267, it has been held as follows :

" 31. The order of dismissal passed by the disciplinary authority was based on dispassionate and independent examination and appreciation of the entirety of facts and evidence on record relating to the malpractices and misappropriation indulged in by the respondent in collusion with the other members of the staff causing thereby huge loss to the Corporation.

32. The scope of disciplinary proceedings and the scope of criminal proceedings in a court of criminal law are quite distinct, exclusive and independent of each other..."

9. In the decision, Commandant, Central Industrial Security Force v. Bhopal Singh reported in AIR 1994 SCC 573, the Hon'ble Supreme Court has held that mere non-furnishing of copy of the enquiry report to the delinquent during disciplinary proceedings, would not vitiate the order of dismissal, if it is not prejudicial to the delinquent.

10. As per the charges framed against the appellant, 1. on 30.07.1981 at about 5 am, the appellant / accused was caught red handed with stolen property, ball-bearing SKF NU-321-1, Germany, by the crime party near N3WH, at the port trust premises, 2. on

18 / 19 July 1981, while the appellant was on duty at WQ-1 Shed in the port trust premises, he removed one ball-bearing SKF NU-321-2, Germany and concealed the said property under a tarpaulin and latter on kept it under red soil bags, with an intention of removing the same on getting opportunity.

11. In the criminal case, the appellant herein had been arrayed as accused. After the trial, by giving benefit of doubt to the appellant / accused, the trial court has recorded its judgment of acquittal. Learned counsel appearing for the appellant would contend that the prosecution has failed to establish the case, hence, the appellant was acquitted in the criminal case. According to him, the witnesses examined in the criminal proceeding and in the departmental proceeding are one and the same.

12. Per contra, the learned counsel for the respondent would submit that it cannot be construed as an Honourable acquittal, since the appellant was acquitted by the criminal court, only by giving benefit of doubt. According to him, the departmental enquiry is a parallel proceeding, since the guilt against the appellant / delinquent was proved in the departmental enquiry, the disciplinary authority passed the order of dismissal from service against the appellant, which was confirmed by the appellate authority.

13. As per the findings of the first respondent, on the information received from S.I. Nedunchezian, about the suspicious movements of the appellant, on 20.07.1981 at about 5 hrs, ASI S.Pankaraj, HSG Rajendran Nair and SG S.Ganapathy, who were on crime rounds, started towards the place of occurrence and found the suspicious movements of the appellant, carrying a bundle covered by a cloth, at the place of occurrence from N3 warehouse, and on seeing the crime party, the appellant threw the bundle and started running towards the barracks. But he was caught hold of by the crime party and brought to the place, where he had thrown the bundle. The bundle was opened in his presence and found containing a ball-bearing, marked as SKP NU 321-2, Germany. On questioning, the appellant confessed before the crime party that he had removed the ball-bearing from WQ-1 shed on the night of 18/19 July 1981, while he was on duty and concealed the same under a tarpaulin with an intention to take it away afterwards under a tarpaulin and again on 28th July 1981, shifted the property to a place in between N3 and N4 warehouses under red soil bags, according to the respondents, the evidence would prove the charges levelled against the appellant.

14. Learned counsel for the appellant would contend that principles of natural justice was not followed by the respondents,

while passing the order of dismissal against the appellant and the same was not considered by the learned single judge, in the writ petition. Mr.P.Wilson, the learned counsel for the respondents submitted that as per law, especially as contemplated under CISF Rules, reasonable opportunity was given to the appellant and that there was no violation of principles of natural justice by the respondents.

15. It has been stated that according to the respondents, the appellant was allowed to peruse the enquiry report and to take extract from the same. The respondents have also averred the same in the counter affidavit, filed in the writ petition. Learned counsel for the respondents submitted that the action taken by the respondents are well within the purview of CISF Rules and in support of his contention, he referred clause 10 (ii) of Rule 34 of the Central Industrial Security Force Rules, 1969, which reads as follows :

" If it is of opinion that any of the penalties specified in clauses (a) to (d) rule 31 should be imposed, such penalty may be imposed on the basis of evidence adduced during enquiry and it shall not be necessary to give the member of the force any opportunity of making representation on the penalty proposed."

16. The Hon'ble Supreme Court of India, in the decision, T.N.C.S. Corpn. Ltd., v. K.Meerabai reported in 2006 (2) SCC 255, has ruled that departmental enquiry and criminal proceedings are quite distinct and dissimilar and the standards of proof, required in a criminal case and departmental proceeding are also different and that the scope of review is limited, with regard to departmental proceeding. As per the said rulings of the Hon'ble Apex Court, interference of this Court would not be warranted, unless the orders passed by the quasi-judicial authorities are clearly unreasonable or perverse or manifestly illegal and grossly unjust.

17. In the decision, M.Paul Anthony v. Bharath Gold Mines Ltd., reported in (1999) 3 SCC 679, the Hon'ble Apex Court held as follows :

" 22. The conclusions which are deducible from various decisions of this Court referred to above are :

- (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

- (ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involved complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.
- (iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.
- (iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.
- (v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

In the above referred case, Hon'ble Apex Court has held categorically that criminal proceeding and departmental proceeding are distinct and they can be continued independently, but when both the proceedings were based on the same set of facts, which was sought to be proved by the same witnesses and if the court has already acquitted the appellant (accused) by rejecting the prosecution case, the subsequent findings recorded against the appellant in an ex parte disciplinary enquiry would not be sustainable. Here in the instant case, there is no ex parte disciplinary enquiry and as contended by the learned counsel for the respondent, in the departmental proceeding, the factors operating in the mind of the disciplinary authority would be of enforcement of discipline or to investigate the level of integrity

of the delinquent official. The standard of proof required in the departmental proceeding is also different from that of the standard of proof required in a criminal case. While in the departmental proceeding, the standard of proof required against the delinquent official is of preponderance or probabilities, but in a criminal case, the charges levelled against the accused person shall be proved by the prosecution beyond all reasonable doubts.

18. In the decision, *G.M.Tank v. State of Gujarat*, reported in (2006) 5 SCC 446, the Hon'ble Apex Court has held, with regard to the sustainability of the departmental enquiry and the dismissal of the delinquent official thereon. When the departmental proceeding and the criminal case are based on the same set of facts and as there was no evidence against the employee to hold him guilty, and the criminal court recorded an Honourable acquittal, a contrary finding in the departmental proceeding, resulting in dismissal of the delinquent official from service is held unjust, unfair and oppressive. The decision would not be applicable, if there was no Honourable acquittal.

19. In the decision, *R.P.Kapur v. Union of India*, reported in AIR 1964 SCC 787, it has been held " If the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted. Even in case of acquittal proceedings may follow, where the acquittal is other than honourable."

20. It is not disputed by the learned counsel for the respondent that when a delinquent official is acquitted honourably and completely exonerated from the charges, it would not be expedient to continue the departmental enquiry against him, on the very same charges or grounds or evidence. But, according to him, the appellant herein was acquitted only by giving benefit of doubt in the criminal case by the XI Metropolitan Magistrate, Chennai. Hence, the acquittal recorded in the criminal case cannot be construed an Honourable acquittal and hence, there is no bar in taking action, as per the departmental proceedings.

21. In the decision, *South Bengal State Transport Corpn. v. Swapan Kumar Mitra*, reported in JT 2006 (2) SC 307, the Hon'ble Apex Court has held that in a criminal case, the charges have to be proved beyond reasonable doubt, while in departmental proceedings, the standard of proof required is mere preponderance of probabilities and therefore, in spite of acquittal in the criminal proceeding, an order of dismissal emanating from departmental proceeding can be sustainable. As per this decision, it is clear that mere acquittal in a criminal proceeding would not " ipso facto", nullify the departmental proceeding.

22. In the decision, Corporation of Nagpur City, Civil Lines v. Ramachandra reported in (1981) 2 SCC 714, at page number 718, the Hon'ble Apex Court has held as follows :

" 6. Normally when the accused is acquitted honourably and completely exonerated of the charge it would not be expedient to continue a departmental enquiry on the very same charges or grounds or evidence, the power of the authority concerned to continue the departmental enquiry is not taken away not is its direction in any way fettered. However, as quite some time has elapsed since the departmental enquiry had started the authority concerned will take into consideration this factor in coming to the conclusion if it is really worthwhile to continue the departmental enquiry in the event of the acquittal of the respondents. If, however, the authority feels that there is sufficient evidence and good grounds to proceed with the enquiry, it can certainly do so."

As per this decision, as contended by the learned counsel for the respondent, mere acquittal of the accused in the criminal case would not take away the power of the authority concerned, to continue the departmental enquiry, against the delinquent official, if the authority holds that there is sufficient evidence and good grounds, to proceed with the departmental proceeding.

23. At this juncture, we find it reasonable to refer to the ruling of the Apex Court with regard to law of precedents in the decision, Uttaranchal Road Transport Corpn. v. Mansaram Nainwal, reported in (2006) 6 SCC 366, which reads as follows

"13... According to the well-settled theory of precedents, every decision contains three basis postulates : सत्यमेव जयते

(i) findings of material facts, direct and inferential. An inferential finding of fact is the inference which the judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what is actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The

enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent."

As per this ruling, the essence of a decision is its ratio and not every observation made there in to be construed as ratio decidendi and as such being a binding precedent.

24. In the above said case, the Hon'ble Apex Court, after considering the ratio laid down in Paul Anthony's case (supra), has clearly ruled that mere acquittal in a criminal case, would neither sufficient to direct for an automatic reinstatement in service, nor render a departmental proceeding invalid, by itself.

25. In the decision, Commissioner of Police v. Narender Singh, reported in (2006) 4 SCC 265, the Hon'ble Apex Court has categorically held that mere acquittal in a criminal trial itself is not a ground to initiate or drop any departmental proceedings.

26. In the decision, G.M.Tank v. State of Gujarat, reported in 2006 (3) CTC 494, the Hon'ble Apex Court has held that when criminal proceedings ended in acquittal, by Judicial pronouncement made after regular and hot trial, it would be unjust and unfair and rather oppressive to allow findings recorded in the departmental proceedings to stand, based on same set of facts and same set of evidence and when there is an Honourable acquittal of an employee, during the pendency of a proceeding, it has to be taken note of that the decision in Paul Anthony's case (supra) will apply.

27. In the decision, Senior Superintendent of Post Offices v. A.Gopalan, reported in (1997) 11 SCC 239, it has been ruled by the Hon'ble Apex Court that acquittal in criminal trial, based on the benefit of doubt, would not be a bar in imposing penalty, by way of departmental proceedings.

28. Taking note of various decisions of the Hon'ble Apex Court, the Division Bench of this Court in the decision, The Deputy Superintendent of Police v. W.D.Sekaran reported in 2005 (5) CTC 672, held that it is not 'axiomatic' that in all cases, where the criminal proceedings based on very same set of facts ended in acquittal, departmental action should not be proceeded with.

29. Therefore, in the light of the decisions referred above, we are of the considered view that if an acquittal in a criminal case is not an Honourable one, it would be open to the authorities, to proceed with the departmental proceedings, against the delinquent official, which is no way against law.

30. In the instant case, it is seen that the enquiry officer, based on the evidence of the prosecution witnesses, has held that the charges levelled against the appellant in the departmental proceeding, has been proved. As per the enquiry report, it is seen that P.W.1 and P.W.2 have categorically stated that on 29.07.1981, at about 5 hrs, in the premises of the Madras Port Trust, when ASI Pankaraj (P.W.1), HSG K.Rajendran Nair (P.W.2), SG S.Ganapathy (P.W.3) were on crime rounds, on receiving information from SI Nedunchezian regarding the suspicious movements of the appellant, proceeded to the place of occurrence and saw the appellant, carrying a bundle covered by a cloth, coming from N.3 warehouse and on seeing the crime party, the appellant threw the bundle and started running towards the barracks, but he was caught hold of by the crime party and brought to the place, where he had thrown the bundle. When the bundle was opened in the presence of the appellant and others, they found the same, containing ball-bearing SKP NU 321-2, Germany. While questioning, the appellant confessed before the crime party that he had removed the ball-bearing from WQ-1 shed on the night of 18/19 July 1981, while on duty.

31. It is seen that learned XI Metropolitan Magistrate has recorded acquittal by his judgment, dated 29.12.1984 in the case in P.V.No.11645 of 1981, only by giving benefit of doubt to the accused. Therefore, we are of the considered view that the acquittal cannot be construed as an Honourable one.

32. Based on the evidence given by P.W.1 and P.W.2 and other witnesses, the enquiry officer held that the charges levelled against the appellant has been proved. The appellant had examined three defence witnesses, but as found by the first respondent, by his order, dated 31.08.1994, the defence witnesses were not eye witnesses to the occurrence and they have not spoken anything about the incident. A Perusal of the case file and the records relating to the departmental proceeding would show that the finding of the first respondent is based on evidence. It is seen further that the Shed Master of Madras Port Trust, who was examined as P.W.5 has deposed in his cross examination that the consignment of ball-bearings were stocked inside the lockfast and the door of the lockfast was found intact and he opened the lockfast on 30.07.1981 at 8.30 hrs.

33. We are of the considered view that P.Ws.1 to 4 have clearly stated that on the date of occurrence, on information, while the crime party proceeding to the place of occurrence, the appellant was found in a suspicious manner, carrying a bundle covered by cloth and on seeing the crime party, he threw the bundle and started running. While, he was caught hold of by the

crime party, he confessed that the ball-bearing found therein in the bundle was stolen by him. There is no strong motive attributed by the appellant against the prosecution witnesses, for having deposed the evidence against the appellant.

34. As held by the Hon'ble Apex Court in a catena of decisions, when there is a concurrent finding by the authorities and the same has been upheld by the learned single judge, unless manifest error of law or perverse finding or grossly unjust, this Court cannot interfere with the same.

35. After careful consideration of the entire records and the arguments advanced by both the learned counsel and in the light of the decisions rendered by the Hon'ble Apex Court and this court referred in this case, we are of the view that there is no manifest error of law or perverse finding, which would lead to miscarriage of justice.

36. Considering the facts and circumstances, we are of the view that merely on the ground of non-furnishing of copy of the enquiry report, in the absence of any prejudice to the appellant, it cannot be held that the departmental enquiry proceedings would be vitiated by principles of natural justice.

37. As held by the Hon'ble Apex Court, in the decision T.N.C.S. Corpn. Ltd., v. K. Meerabai, reported in 2006 (2) SCC 255, a criminal proceeding is different from departmental enquiry, with regard to standards of proof required. In a criminal case, unless the guilt against a person is not proved beyond reasonable doubt, one cannot be punished and the benefit of doubt should be given only to the accused, but in the departmental enquiry, it is not so, in the departmental enquiry, it is clear that preponderance of probability is sufficient to prove the charges. As contended by the learned counsel for the respondents, the criminal court has acquitted the accused, only by giving benefit of doubt in favour of the appellant. Therefore, it cannot be construed as a Honourable acquittal.

38. The Central Industrial Security Force is a disciplined force, entrusted with the important task of safeguarding valuable properties, especially the imported goods at the premises of the port trust and the theft, being committed by an official belong to Central Industrial Security Force cannot be construed so lightly.

39. From the available evidence on record, we are of the considered view that there is no manifest error of law or perverse finding, which leads to miscarriage of justice, so as to warrant the interference of this court. We could find no error in the

order passed by learned single Judge in the writ petition and hence the writ appeal fails.

40. In the result, the writ appeal is dismissed. No costs.

tsvn

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Group Commandant,
Central Industrial Security Force,
Office of the Group Commandant, Chennai-102.

2.The Deputy Inspector General (S-2),
Central Industrial Security Force, Chennai-102.

3.The Director General,
Office of the Director General,
Central Industrial Security Force,
Lodhi Road, New Delhi-110 003.

+ 1 cc to Mr. P. Wilson, Asst Solicitor General of India SR No. 22652

+ 1 cc to the Mr. V. Selvaraj, Advocate SR No. 22772

W.A.No.716 of 1998

MS (CO)
SR/16.4.2007

WEB COPY